



WESTPORT CONNECTICUT

PLANNING & ZONING
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Hearings: March 13, 18 & 27, 2008

April 21, 24 & 28, 2008

May 12, 14, 19, 20, 22, 28 & 29, 2008

June 2 & 26, 2008

Work Sessions: June 30, 2008

July 2, 7, 29, & 31, 2008

September 11, 15, 18 & 25

October 14 & 23

Decision: October 23, 2008

Technical Corrections: November 6, 2008

October 24, 2008

Lawrence P. Weisman
Halloran & Sage
315 Post Road West
Westport, CT 06880

**Re: 4, 5, 11, and 14 Sunny Lane, Special Permit/Site Plan Appl. #08-057
Westport Weston Family Y (WWFY)**

Dear Mr. Weisman:

This is to certify that at a meeting of the Westport Planning and Zoning Commission held on October 23, 2008 it was moved by Mr. Kasanoff and seconded by Mr. Press to adopt the following resolution.

RESOLUTION #08-057

WHEREAS, THE PLANNING AND ZONING COMMISSION met on October 23, 2008 and made the following findings:

1. This application was originally submitted on December 17, 2007 with an official date of receipt of December 20, 2007. The application was assigned application #07-075. On June 2, 2008, the application was withdrawn by the applicant following 14 public hearings. The application was resubmitted on June 3, 2008 with an official receipt date of June 5, 2008. The new application was assigned application #08-057. A new legal notice and certificate of mailing was submitted. The applicant requested that the entire record of application #07-075 be incorporated in application #08-057.
2. This application involved a total of 16 public hearings averaging approximately 4 hours each.
3. The Commission members sitting on this application included: Ron Corwin, Chairman, Eleanor Lowenstein, Vice Chairman, Howard Lathrop, Secretary, Helen Martin Block, Bruce Kasanoff, David Press, and Ken DeSanctis, Alternate.
4. Michael Krawiec, a regularly elected member of the Planning & Zoning Commission, was originally seated on this application when the public hearing first opened on March 13, 2008. On May 12, 2008 Mr. Krawiec formally recused himself from this application when it was discovered that his name and signature appeared on a petition

circulated by Y Downtown, one of the interveners, prior to the WWFY application being filed. (Document 689 – Letter from Michael Krawiec dated 5/12/08) Mr. Krawiec explains in his letter that he did not recall signing the petition and he was confident that he could make a fair and impartial decision. However, given the controversy over this application, Mr. Krawiec decided to recuse himself from the proceedings. Kenneth DeSanctis, a P&Z alternate, was seated on May 12, 2008 for Mr. Krawiec and Mr. DeSanctis reviewed all the materials and hearing tapes of the previous sessions.

5. The application involves properties located at 4, 5, 11, and 14 Sunny Lane. These properties were consolidated into one lot on 10/11/07 as shown on Westport Land Records Map #9854. Lees Pond, while owned by the Westport Weston Family Y, is not part of this application.
6. The perimeter survey map submitted by the applicant dated April 8, 2008 shows the property size is 30.698 acres. This includes 4 Sunny Lane (1.1968 acres), 5 & 11 Sunny Lane (3.2516 acres) and 14 Sunny Lane (26.25 acres). This property is commonly referred to as Camp Mahackeno.
7. The Young Men's Christian Association (YMCA) operated Camp Bedford, a "stay at home camp for younger boys" beginning in 1942 at 14 Sunny Lane. Enrollment was approximately 60 boys. The YMCA subsequently purchased the property in 1945. The name of the camp was changed to Camp Mahackeno in 1946. Girls were permitted later in 1969. By the late 1990's enrollment at the day camp had expanded to more than 700 children. This camp continues to operate. The YMCA now operates under the name Westport Weston Family Y (WWFY).
8. During the course of the hearings on this project the applicant acquired two additional properties. On June 2, 2008 the applicant acquired a 1 acre parcel known as 8 Sunny Lane and on June 25, 2008 they acquired a 0.8 acre property known as 10 Sunny Lane. Both of these lots are developed with single family dwellings. As of the close of the public hearing these lots had not been consolidated with the project site.
9. **GENERAL PROPERTY DESCRIPTION**
 - a) The site is located in the northwest section of Westport east of Wilton Road (Route 33) and south of the Merritt Parkway (Route 15) situated between Sunny Lane and Rice's Lane, adjacent to Exit 41 of the Merritt Parkway, shown on Tax Maps B13 and C13, Lots 25, 23, 11, 2. Portions of the site are located within the Waterway Protection Line Ordinance boundary, within the 100-year floodplain of Poplar Plains Brook and the 100-year floodplain of the Saugatuck River, and within the Level A Mapping Aquifer Protection Overlay Zone.
 - b) The project area is approximately 30.7 acres consisting of multiple lots on Sunny Lane owned by the WWFY. The property is bisected by Poplar Plains Brook that flows west to east and connects to the Saugatuck River and Lees Pond to the east. The north side of the project area (north of the brook) is accessed from Sunny Lane off Wilton Road. The south side (south of the brook) of the property has restricted access from Rice's Lane. A bridge across Poplar Plains Brook connecting the southern and northern portion of the property was recently replaced and is designed to support emergency vehicles if necessary. There are also smaller footbridges.
 - c) The topography consists of relatively flat areas north and south of Poplar Plains Brook with steep ridgelines bordering the brook, along Lees Pond, and in the southwest portion of the property. Areas of steep slopes comprise 82,389

SF or approximately 1.89 acres. The on-site wetland area is 123,581 SF or approximately 2.84 acres. A portion of the site is located within the Waterway Protection Line boundary, the 100-year floodplain of Poplar Plains Brook and the 100-year floodplain of the Saugatuck River.

10. **SURROUNDING AREA** Surrounding zoning and land use includes The Red Barn restaurant which is located nearby at the corner of Wilton Road (Route 33) and Sunny Lane; this is a pre-existing non-conforming use in the Res AAA district. There is a telecommunication facility (cell-tower) also located nearby at 2 Sunny Lane. The Merritt Parkway (Route 15) is located to the North. The Saugatuck River is located to the east. Private residences are located immediately south and west on Rice's Lane and Sunny Lane. Those at numbers 8 and 10 Sunny Lane are owned by the WWFY. There are also residences across Lees Pond in a Res A (1/2 acre) zone.
11. The property is located within a Residence AAA district. The Res. AAA district has a required minimum lot size of 2 acres and front, side and rear setback requirements of 50 feet on all sides. The maximum building height in this zone is 3 stories and 40 feet. The maximum total lot coverage is 25%. There are no building coverage or floor area limitations in the Res. AAA zone.
12. The applicant submitted a Site Plan/Special Permit application to construct a 102,382 SF building to accommodate the WWFY facility, a 391 SF septic system control building, 2 new open air pavilions, a 336 space parking lot and a new subsurface wastewater disposal system.
13. Camp Mahackeno will maintain its seasonal use as a WWFY day camp facility. The project also includes modifications to Sunny Lane consisting of road widening, resurfacing, partial road abandonment and relocation, modifications to the Merritt Parkway Exit 41 on/off ramp and connector including adding two travel lanes, adding a new traffic signal on the connector at the northbound ramp, and synchronizing the new traffic signal with the existing traffic signal at Wilton Road (Route 33)/connector road.
14. **APPLICABLE REGULATIONS** This application is subject to the following sections of the Westport Zoning Regulations: §11, Residence AAA District (including, §11-2.2 Special Permit Uses), §31-7 Setbacks from Water bodies, Watercourses and Wetlands; §31-12 Aquifer Impacts, §34, Off-Street Parking and Loading; §35, Landscaping Screening, and Buffer Areas; §37 Sedimentation & Erosion Control Regulations, §38 Aquifer Protection Overlay Zone, §43 /§44, Special Permit and/or Site Plan Procedures / Documents.
15. **PRIOR APPROVALS** The record reveals prior approvals and comments to date on this project include the following:
 - a) The Westport Flood and Erosion Control (FECB) reviewed and approved the application for a new "Y" facility pursuant to the Waterway Protection Line Ordinance (WPLO). The application was approved at their 10/11/06 meeting subject to standard and special conditions.
 - b) The Connecticut Department of Environmental Protection (CTDEP) approved the construction of a wastewater disposal system designed for a 34,000 gallons per day (gpd). CTDEP issued a Tentative Determination for an Underground Injection Control Permit on 5/5/06. On 2/27/07 DEP issued a Proposed Final Decision Summary that concluded the application met all applicable statutory and regulatory criteria and the wastewater treatment system would protect the waters of the state from pollution, if constructed as proposed according to Ms. Janice B. Deshais

of the CTDEP in the 'Proposed Final Decision Summary' dated 2/27/07. A Final Decision was issued by DEP on 8/3/07 that upheld the decision made on 2/27/07.

- c) The Westport Conservation Commission approved the application at their 4/26/07 meeting. This approval is subject to 57 conditions. The conditions of approval provide safeguards to protect on-site wetlands and watercourses. The conditions also provide for monitoring to protect against groundwater contamination from the wastewater disposal system. The conditions additionally provide more means to manage and improve water quality from storm water runoff.
- d) The Westport Police Department. On February 27, 2008, (Document 88 - - Fax from Police Department) Police Public Safety Officer, John Parisi commented "*The internal traffic circulation should allow for a separate child drop off/pick up area. At this point we do not foresee any other public safety concerns with the project.*"
- e) The Westport Weston Health District (WWHD) commented on 3/6/08 (Document 116 – Transmittal from WWHD) "*The WWHD does not object to the relocation of the YMCA to the proposed Sunny Lane site. Any revised site plan must be submitted to WWHD prior to final approval.*"
- f) The Westport Historic District Commission (HDC). On March 11, 2008 the HDC reviewed this application and provided comments to the Planning & Zoning Commission. The HDC has requested referral of any application involving properties containing buildings more than 50-years old. Formal review by HDC is required prior to demolition of any buildings more than 50-years old. The HDC recommended that the 1928 Dutch Colonial Revival house at 4 Sunny Lane be retained, preferably on its original site.
- g) The Westport Architectural Review Board (ARB) originally offered a preliminary review of the application at their 7/11/06 meeting. The Board again reviewed the project on 3/11/08. They continued to recommend approval of the project design with the understanding that derivation and choice of materials and style be taken into consideration, and that efforts will be made to incorporate solar panels.
- h) The Westport Fire Marshall, Edward Zygmant, provided comments to the P&Z Commission (Document 172 – Memo from Ed Zygmant, Fire Marshall, dated 3/12/08). Marshall Zygmant stated that "*During several meetings, site access from Wilton Road, access within the site and floor plans reviewing access and egress were addressed.*"
- i) The Westport Board of Selectman. The Westport Board of Selectman on April 9, 2008 (Document 515 – Letter from Gordon Joseloff, First Selectman) approved two requests to discontinue 2 portions of Sunny Lane, a private road, pursuant to Section 13a-49 of the Connecticut General Statutes (CGS).
- j) The Westport Zoning Board of Appeals (ZBA) approved variances as part of this project May 27, 2008 in Case #6726 (Document 905 – ZBA Variance dated 6/2/08). Setback variances were granted for landscaping and buffer areas shown on the approved ZBA plan. Variances were also granted for the west side of the proposed main building. These variances

were granted based on the condition that the applicant gain title to and legally abandon the easterly leg of Sunny Lane.

- k) The Westport Representative Town Meeting (RTM). The RTM reviewed different aspects of this application on two separate occasions. In August 2007, the RTM reviewed an appeal of the decisions of the Westport Conservation Commission and the FECB under the Waterway Protection Line Ordinance (WPLO). The RTM Environment Committee on 8/6/07 recommended that the RTM reverse the decision of the Conservation Commission application #IWW, WPL 8020-07. However, on August 6, 2007 the RTM upheld the decisions of the Conservation Commission and the Flood and Erosion Control Board. The second occasion for the RTM to review this application was pursuant to CGS 13a-49. In this review on 6/17/ 08 the RTM concurred with the Board of Selectman to discontinue two portions of Sunny Lane. (Document 998 – email from Patricia Strauss, Town Clerk, dated 6/3/08)

16. **TOWN'S CONSULTANTS** The Planning & Zoning Commission hired the following experts to assist them in evaluating this application. Their work includes written reports and testimony at public hearings.

- a) Sharat Kalluri, of Wilbur Smith Associates to conduct a peer review of the applicant's traffic report, roadway circulation plan and parking calculations. Mr. Kalluri is a licensed professional engineer, specializing in traffic engineering. Mr. Kalluri prepared a series of reports as part of the peer review these can be found in the public hearing record as Documents 86 (dated 2/26/08), 106 (dated 3/5/08), 190 (dated 3/13/08), 242 (dated 3/17/08), 243 (dated (3/17/08), 353 (dated 3/31/08), and 660 (dated 5/1/08).
- b) Patrick Wellspeak, of Wellspeak, Dugas & Kane to conduct a peer review of the applicant's value impairment analysis. Mr. Wellspeak is a licensed MAI appraiser. Mr. Wellspeak's report was submitted on 4/15/08 as Document 514.
- c) Gary Dufel, of Stearns & Wheler to conduct a peer review of the applicant's waste water treatment system and storm water drainage system. Mr. Dufel is a licensed professional engineer. His report dated April 19, 2008 is Document 771. A follow up letter is Document 871.
- d) John Kastrinos, of Haley & Aldrich was hired as a subcontractor to Stearns & Wheler to review impacts to ground water and the nearby aquifer. Mr. Kastrinos is a professional hydrologist. His report dated 5/22/08 is Document 788.

17. **APPLICANT'S CONSULTANTS**. The Planning & Zoning Commission reviewed documents and received testimony from the following attorneys and consultants representing the applicant:

- a) Halloran and Sage (Lawrence Weisman), represents the Y as legal counsel
- b) Land Tech Consultants (Peter Romano, Tom Ryder and Mike Bartos), septic and ground water engineers and environmental consultants
- c) Robert A.M. Stern (Kevin Smith), architect
- d) Andropogon Associates (Colin Franklin), landscape consultant
- e) Frederick P. Clark (Michael Galante), traffic consultant

- f) Redniss & Mead (Rick Redniss), planning consultant;
- g) Cory Attra, an engineering consultant
- h) Turner Construction, participated in the value engineering
- i) Parsons Brinkerhoff, consulted in connection with traffic and highway interchange reconstruction
- j) Grant Weaver, hired for the in-ground sewage disposal system;
- k) Leggette, Brashears & Graham, Inc. (LBG) (Russell Slayback), a professional hydrologist
- l) Michael Gold Associates (Michael Gold), certified appraiser
- m) Ernest Wiegand, consultant in archaeology

18. **INTERVENER'S CONSULTANTS.** The Planning & Zoning Commission reviewed documents and received testimony from the following attorneys and consultants representing the interveners:

- a) Goldstein & Peck (William Kupinse), legal counsel for the intervener Y Downtown
- b) Lerner & Guarino (Edward Lerner), counsel for intervener Arthur Cohen
- c) Evans, Feldman & Ainsworth (Keith Ainsworth), environmental counsel for Y Downtown
- d) Scott Cullen, registered consulting arborist for Y Downtown
- e) Robert Roseen, PhD, PE (University of New Hampshire), storm water consultant for Y Downtown
- f) Herbert Gram, review of the FAST system for Y Downtown
- g) Phillips Preiss Shapiro Associates (Paul Grygiel), planning consultant for Y Downtown
- h) Earth-Tech (Dennis Flynn), traffic consultant for Y Downtown
- i) Richard Harris, environmental consultant for Y Downtown
- j) Turner Miller Group (Brian Miller), parking consultant for Y Downtown
- k) Leo Smith, lighting consultant for Y Downtown
- l) Jim Eastwood, fire safety consultant for Y Downtown

19. **NON COMMERCIAL RECREATIONAL USE** The P&Z Commission finds that the proposal complies with §11-2.2.3 as a non-commercial recreational use and thus is permitted within the Residence AAA District pursuant to Special Permit approval. In reaching this conclusion, the Commission finds that the proposed project does not meet the definition of Commercial Use in §5-2 which states that commercial use is

“An occupation, employment or enterprise that is carried on for profit by the owner, lessee or licensee.”

Among the parts of the record that supports this finding are Document 805 dated 5/23/08 in the record “Rebuttals & Responses” has under tab #4 a letter from Attorney Joan Lovell, Associate General Counsel to YMCA of the USA confirming that all YMCA's have tax exemption status pursuant to Sec. 501 (c) (3) of the Internal Revenue Code. Document 3 is the Town of Westport Assessor's Field Card and it uses the land use codes 980 & 981 (non-profit land & non-profit building).

20. **COMPLETE APPLICATION** The P&Z Commission finds pursuant to §43-4 that this application is a complete application. It is the Commission's standard practice that certain routine items required by the Commission may be submitted by the applicant at a date subsequent to the date that the application has been officially

received, but before the issuance of a zoning permit. This is consistent with the past practices of the Commission. Only a limited number of documents will be submitted at a later date, all for valid reasons. The submission of these documents at a date subsequent to the date of the application has been officially “received” does not render this application incomplete at the time of filing.

In this regard, the Commission notes that the final archaeology report for the parking lot areas on 4, 5, & 11 Sunny Lane was to be completed by September 30, 2008 (after the Public Hearing was closed) and a final report to be prepared by March 1, 2009. Document 980, dated 6/9/08 from the Public Hearing record includes a letter from Ernest Wiegand, archaeology consultant for the applicant, indicating the schedule for the completion of this work. Document 117 dated 2/26/08 from the Public Hearing record is a letter from Robbin Cabelus, Executive Director of the State Traffic Commission (STC) stating that the STC will not act upon the application until “local Planning & Zoning approval is received.”

21. **SECTION 31-12** The P&Z Commission finds §31-12, Aquifer Impacts should not be applied on a site specific basis to this application or any other application. The Commission considered Document 999, a memo by Planning & Zoning Director Larry Bradley dated 6/20/08 along with its attachments, to help make the following findings:

- a. The Commission finds that §31-12 is a planning tool, rather than a section to be applied in a site specific manner.

The Commission notes a letter from Robert Hust of the Connecticut DEP to Alicia Mozian, dated 6/17/08 Paragraph 4 on page 2 (attached to Document 999): This letter states that 350 gallons per day per acre, which is the same reference in Section 31-12, is to be considered a “*planning number*” and “*not intended to be applied as a site specific limit.*” The letter goes on to say “*If a local agency chooses to use a ‘gallon per acre per day’ requirement in their local zoning regulations, it should further qualify any number as a planning number and when exceeded the applicant may be required to perform a sewage renovation analysis for the site.*”

- b. The Commission finds that Section 31-12, even as a planning tool applies only to residential developments. Considering the fact that the mapped area of this regulation is almost entirely residentially zoned property and the fact that the regulation specifically discusses reducing the size of developments by suggesting fewer bedrooms, the Commission finds that the intent of this regulation is directed to residential development.

In fact, the original document A Guide to Ground Water And Aquifer Protection July, 1980 by the South Western Regional Planning Agency (SWRPA), from where this standard was derived, references the 350 gallon standard. The standard is discussed in the context of residential uses.

- c. Based upon testimony relating to discussions Planning Director Laurence Bradley had with long time staff members of the Planning & Zoning Department, the Commission was advised that Section 31-12 has never been applied to any Commission application or zoning permit. The Commission finds it would be arbitrary and inconsistent to make this applicant comply with a section of the regulations that has never been used by any previous Commission or by the P&Z staff.

- d. Notwithstanding the findings listed above that Section 31-12 should not be applied on a site specific basis to this or any other application:
- i) The P&Z Commission finds that the standards in Section 31-12 if viewed as anything other than a planning tool are inherently prohibitive. The section used a standard of 350 gallons per day per gross acre. This would limit a septic system to support only a two-bedroom house on a 1 acre lot. This standard is extremely prohibitive has never been applied to specific sites in Westport and confirms the Commission's view that this standard, even if it were something other than a planning tool, would apply only to residences.
 - ii) The Commission also finds that this standard is in conflict with the current aquifer regulatory standards mandated by the Connecticut Department of Environmental Protection (CTDEP). The mapped area in Section 31-12 is inconsistent with the most recent mapping that now exists for the aquifer recharge area. The original map that was used for this section and is still referenced in this section was developed by the South Western Regional Planning Agency (SWRPA). SWRPA has no legal authority to establish aquifer mapping areas. This authority resides with the CTDEP. The map in Section 31-12 is an obsolete map from the July 1980 SWRPA report. The current aquifer map utilized by CTDEP shows a different configuration of the aquifer zone.
 - iii) Section 31-12 makes reference to a community sewerage system. Though in the past, the Commission has never defined a community sewerage system, the Commission now finds that the proposed septic system for the Westport Weston Family Y would meet a reasonable definition of a community sewerage system. Among the reasons for this finding is the ordinance passed by the RTM on December 5, 2006 for Private On-Site Wastewater Disposal Systems (POWDS). Town attorney Ira Bloom described to the RTM on November 14, 2006 (Document # 965) page 18 in reference to a question about regulation of community septic systems:

"The kind of commercial POWDS or community septic system proposed at the location of the new YMCA, and by the way, let's be honest, this is intended to focus on the new Y proposal. Let's say that. There's nothing wrong with that either because that presents a new proposal for the Town which does present some risks for the Town. There is nothing wrong with saying up front that it is intended to address the one community septic system which is being proposed. These kinds of systems, commercial in nature, are regulated by the State Department of Environmental Protection. They have a detailed permitting process, and the DEP is currently reviewing the Y proposal. State statutes also provide that the local Water Pollution Control Authority (WPCA) regulates community septic systems, although the authority under the statute is expressly given only for residential systems. This is not a residential community septic system. Nevertheless, in reviewing the

total statutory scheme as well as a number of cases which discuss the broad authority of the local WPCA, we have concluded and felt absolutely comfortable that the Town, acting through its WPCA, has authority and is on firm legal ground to cover the financial aspects of this and to safeguard the Town from financial disaster. That is the purpose of this regulation and that's what we accomplished. We do believe we are on solid legal ground. At the same time, we went over the entire area very carefully because we had to be certain that we didn't overstep our authority or infringe upon the DEP's authority. I think we were successful in finding that balance and making sure that what we proposed and what the WPCA passed last week was indeed on solid ground focusing again on financial safeguards for the Town, the maintenance fund and the emergency fund primarily. Regulations providing for financial security for the Town."

Therefore, the Commission finds that the proposed WWTS system fits under the generic definition of a community sewerage system applying the generally understood definitions of those terms.

iv) The P&Z Commission further finds that even if §31-12 were to be applied specifically to this site, the proposed denitrification system associated with this project would meet the original legislative intent of this regulation as noted in the 1980 SWRPA report. Page 20 from the original SWRPA report also states that the 350 gallon per acre per day standard does not need to be implemented when a denitrification system is utilized. The report reads as follows:

"In unsewered areas, wastewater discharge should average no more than 350 gallons per acre per day unless denitrifying waste disposal systems are installed. A regulation of this sort would accommodate normal single-family home development and would allow for alternative and innovative residential developments. A waste water disposal system that required higher discharge rates than 350 gallons per acre per day could also be accommodated if the developer proved that the system would not degrade the ground water."

The Commission finds that the proposed WWTS system is in fact a denitrification system.

22. **DUE CONSIDERATION** The P&Z Commission finds that pursuant to Section 8-3(g) of the Connecticut General Statutes (CGS) they have given due consideration to the report from the Conservation Commission and finds that the report from Conservation adequately addresses the environmental impacts of this application. The final report of the Conservation Commission was submitted along with the application and can be found in Document 12 dated 12/17/07 under Tab E. While the P&Z Commission agreed that their jurisdiction was different in some respects from the Conservation Commission based upon testimony and the record, the P&Z Commission

accepted the Conservation Commission's findings and found no substantial evidence in the record which would cause it to disregard the Conservation Commission's findings or approval. However, under the zoning regulations the P&Z Commission may impose appropriate conditions in addition to the Conservation Commission conditions of approval.

23. **WASTE WATER TREATMENT SYSTEM** The P&Z Commission finds that the decisions of the Conservation Commission and the Connecticut Department of Environmental Protection (CTDEP) to approve the proposed Waste Water Treatment System (WWTS) to be reasonable and acceptable. The WWTS includes a Fixed Activated Sludge Treatment (FAST) system, which is a denitrification system. The Commission relied upon their own consultant, Gary Dufel of Stearns & Wheler to assist them in their review of this system. In Mr. Dufel's report (Document 771) dated 4/19/08 on page 12 and 13 he concludes as follows:

" Will this proposed development have a significant adverse impact on the environment? In our opinion – no it should not have a significant environmental impact." ... " Will it have an impact? Almost Certainly. The record makes that clear. These impacts are primarily due to : Added nitrogen to Lees Pond from the treatment plant (2-3 pounds per day if the plant is meeting its permit, up to about 8 pounds per day if it is not) and from drainage runoff. These impacts should be considered an incremental loading to an already overloaded receptor. "

The P&Z Commission also considered the fact that the CTDEP reviewed this system three times, once at the application phase, a second time on appeal to a hearing officer and a third time by the CTDEP Commissioner. The CTDEP made the following findings in their Proposed Final Decision dated 2/23/07 (Document 12 Tab D)

- a) *"The application and the draft permit comply with the provisions of General Statutes 22a-430 and its implementing regulations." Pg 24*
- b) *"The proposed treatment system would protect the waters of the state from pollution." Pg 28*
- c) *"The discharge is not reasonably likely to unreasonably pollute, impair or destroy the public trust in the water and other natural resources of the state." Pg 31*
- d) *"There are no feasible or prudent alternatives." Pg 32*
- e) *"The permit would not constitute state support for an advanced treatment technology within the meaning of the State Plan of Conservation and Development." Pg 33*

A further review of this applicant was undertaken by CT DEP Commissioner Gina McCarthy on August 3, 2007 based on an appeal by Y Downtown, Inc. (YDI), an Intervener in this application. (See Document 12 Tab F). Commissioner McCarthy made the following additional findings:

- a) *"Intervening party YDI [an intervener in this application] could not show that the proposed final decision was in error due to the denial of its motion to reopen the hearing." Pg 2*
- b) *"Two burdens of proof are required in this application; since the applicant met its burden of proof and the intervening party did not, this application is granted." Pg 4*

- c) *"The applicant's experts were qualified to testify as to the future compliance of the system." Pg 7*
- d) *"By statute the State Plan of Conservation and Development does not apply to this application and can not be considered in a decision to grant the permit." Pg 8*
- e) *"The hearing officer considered public comments in this proceeding" Pg 9*
- f) *"There is evidence to support the factual findings in the proposed final decision." Pg 10*

The Commission finds that the proposed FAST system will not degrade the groundwater. Nonetheless, further additional controls and monitoring as proposed herein will provide additional protection for the environment.

24. **TRAFFIC** The March 26, 2008 Updated Traffic Analysis (Document 275) by the applicant's traffic consultant, Frederick P. Clark, (following the six-page introductory letter to Ms Helene Weir) states in Site Generation Traffic, page 2 that it is anticipated the WWFY will generate 286, 316 and 231 vehicle trips during the weekday morning , weekday afternoon and Saturday midday peak hours respectively. In addition, the analysis assumes an estimated 200 trips for special events could be added to the roadway system overlapping with the Saturday midday peak hour volumes and therefore the figure 431 is used for Saturday midday site traffic.

- a) **Mitigation.** On page 5 entitled Mitigation, the applicant outlines the mitigation plan to be provided by the Westport Weston Family Y to accommodate the traffic increase:
 - *"Reconstruct Sunny Lane*
 - *Widen the Merritt Parkway Connector;*
 - *Widen the Merritt Parkway northbound off-ramp;*
 - *Install traffic signal at Merritt Parkway Connector/Merritt Parkway off-ramp/Sunny Lane;*
 - *Replace/upgrade traffic signal at State Route 33/Merritt Parkway Connector;*
 - *and,*
 - *Fine tune traffic signal timing at State Route 33/Merrit Parkway southbound ramps.*

The Town/State should consider the following improvements:

- *Install a traffic signal at State Route 33/Partrick Road; and,*
- *Improve the State Route 33/State Route 57 intersection (ConnDOT plans from 1996). "*

Westport's zoning regulations Section 44-2.5 authorizes the Planning and Zoning Commission to require the applicant to revise their plans to provide adequate mitigation if necessary where it is projected that the additional traffic resulting from the project will exceed a volume capacity ratio of 0.8 on the adjacent streets, increase the peak hour volume by ten (10) percent or more, reduce the level of service to "D" or below for the intersection as a whole, or further reduce the level of service when it is already at "D" or below for the intersection as a whole.

The Commission hired their own traffic consultant, Sharat Kalluri from Wilbur Smith Associates to do a peer review of all the applicant's traffic analysis.

b) State Route 33/State Route 57 Intersection

For the State Route 33/State Route 57 intersection, the applicant's traffic consultant suggests in Figure 23 of the applicant's Updated Traffic Analysis, March 26, 2008 (Document 275) that physical improvements be made to the intersection by the Town/State, but he also shows that the intersection should have fine tuning of the traffic signal. Mr. Kalluri, the town's traffic consultant writes in his letter dated May 1, 2008, page 2, Mitigation, to Mr. Laurence Bradley, Planning Director:

"The applicant's traffic consultant has provided level of service analysis with the fine tuning of traffic signal timing. We have a concern in the deterioration in overall level of service from LOS E to LOS F during the weekday afternoon peak hour period. It is our understanding that the applicant's traffic consultant will review the analysis and try to minimize the delay at the intersection as a result of this project."

The Commission cannot locate the documents in the Updated Traffic Analysis that show level of service and queue analysis for fine tuning only of the Route 33/57 intersection without physical improvements. However, in the Frederick P. Clark document April 29, 2008 (Document 602) to Mary Young, Assistant Town Planner, Table 1 shows both level of service figures and queue length when the mitigation is traffic signal timing changes only. This shows the overall level of service for the afternoon peak remains at LOS E for build conditions with the signal timing improvements.

The Commission finds that these discrepancies between the analyses and the sources from Mr. Galante and Mr. Kalluri must be rectified to demonstrate a LOS E or better will be maintained.

c) State Route 33/Partrick Road Intersection

Mr. Kalluri writes in his letter dated April 11, 2008 (Document 500), page 7 in reference to the mitigation of the Route 33/Partrick Road intersection, which the applicant has listed as the responsibility of the Town/State:

"Based on the Westport Regulations the following conditions are met:

- *The peak hour traffic volumes increase by ten (10) percent or more.*

- *The level of service drops to LOS D on Partrick Road.*

Therefore, based on the Westport Zoning Regulations the applicant should consider mitigation at this intersection. The applicant's traffic consultant proposes a traffic signal at this location. However, the applicant's traffic consultant has not revised the traffic signal warrant analysis to determine if the intersection meets signal warrants. The

applicant's traffic consultant should provide updated traffic signal warrant analysis."

In addition, the Commission recognizes that further review of this application will be conducted by the Connecticut Department of Transportation (ConnDOT) under the auspices of the State Traffic Commission (STC). By statute an STC permit is required to be issued for this project before a building permit may be issued by the Town of Westport.

Based on the information above and other documents and testimony the Commission finds that the State Route 33/State Route 57 Intersection may need physical improvements to the road including lane additions and/or traffic signal timing changes with respect to Section 44-2.5(d) of the Westport Zoning Regulations.

With respect to the State Route 33/Partrick Road Intersection the Commission finds that a traffic light may be needed.

The Commission finds that although this project will increase traffic, the impacts can be addressed by implementing all of the mitigation suggested in the Frederick P. Clark Updated Traffic Analysis, dated March 26, 2008, and the "Response to Commissioner/Consultant Comments – Westport Weston Family Y, Westport, Connecticut", April 29, 2008 and as further updated by the testimony of Sharat Kalluri.

25. **STORM WATER** The P&Z Commission finds that the storm water management plan for this project can be adequately modified to manage storm water flow and protect water quality. The Commission heard testimony from a number of expert witnesses on this topic including the Commission's own consultant, Gary Dufel. In, Mr. Dufel's report (Document 771) 4/19/08 dated he states "*We concur that the environmental impacts would be diminished by increasing the biofiltration systems on-site...*" Mr. Dufel further states:

"...if this reduction in impervious area is allowed, the size of the proposed treatment and storage systems be retained so that they can handle storms in excess of 1" (for treatment) and 25 year frequency (for storage)."

The Commission finds that the storm water impacts of this project can be reasonably mitigated through a series of conditions and modifications.

26. **AQUIFER** The P&Z Commission finds that this application will not have an unreasonable or significant adverse impact on the public drinking water supply aquifers within the Town of Westport. The Commission reached this conclusion based on information from multiple sources in the record including, a report and testimony from John Kastrinos, a professional hydrologist, hired by the Commission as a subcontractor to Stearns & Wheler; three letters from Brian Roach, Supervisor of Environmental Protection for the Aquarion Water Company; and expert testimony from the applicant's consultants including Russell Slayback and Michael Bartos.

On April 28, 2008 Russell Slayback the applicant's hydrology consultant testified before the P&Z Commission. Mr. Slayback made the following statement:

"I concur with Mr. Roach that the separating distance between the Westport and Weston Family Y septic system would provide adequate protection to the Aquarion Canal Street well field, which is located about 3,500 feet downstream."

Further Mr. Slayback testified that:

"We determined that with compliance with the DEP standard of 10 milligrams per liter of nitrate nitrogen leaving the pretreatment facility, the dilution available on the site would result in 5.1 to 4.3 milligrams per liter of nitrate nitrogen discharging to Lee's Pond. That depends on whether you talk about the design flow of some 34,000 gallons a day or the more realistic average flow that would occur on day-to-day basis of 24,000 gallons a day."

In Mr. Kastrinos' report (Document 788 dated 5/22/08). He writes:

"Under mounded conditions, depth to groundwater will be in the range of roughly 15 to 20 ft below ground surface, which will allow for further attenuation of waste water parameters through unsaturated soils below the proposed disposal system." On page 2 he writes "The Connecticut Department of Environmental Protection (CTDEP) requires that a 21-day travel distance be calculated for leaching fields constructed in native soils, stipulating that groundwater cannot travel to a likely point of discharge (in this case, Lees Pond) within the 21-day period. ...Accordingly, this is an appropriate and conservative approach and we concur with their conclusion [LBG, the applicant's consultant] – that the 21-day travel distance will be well up gradient of Lees Pond."

Further on pages 3-4 he writes

"Effluent treated to a level of 10 mg/l (i.e. a FAST system that is performing well) would result in nitrogen concentrations of 0.8 to 5.3 mg/l in the well field. These values represent an increase of 0.3 to 0.4 mg/l above existing background concentrations but the predicted concentrations do not exceed the MCL [Maximum Contaminant Level]. Effluent treated to a level of 25 mg/l (i.e. a FAST system that is performing poorly) would result in nitrogen concentrations of 1.5 to 6.2 mg/l in the well field. These values represent an increase of 1.1 to 1.2 mg/l above existing background concentrations, but the predicted concentrations do not exceed the MCL."

Brian Roach, in a letter addressed to Alicia Mozian, Conservation Director, (Document 550) dated April 17, 2008 states

"...the Town should be prudent and circumspect in its review of the current proposal. Accordingly, Aquarion asks that the Town re-examine the issue of waste water disposal for the proposed facility. Specifically, Aquarion asks that the Town consider, 1: if waste water disposal via a connection to the Town's municipal sewage collection and treatment system is a viable alternative to

on-site disposal, 2: if an alternative location at the site that is further removed from the edge of Lees Pond is feasible for the proposed waste water disposal system, and 3: if a conventional septic system might be used at the site instead of a potentially problematic ATS.”

However, Brian Roach, in a letter addressed to First Selectman, Gordon Joseloff, (Document 849) dated May 29, 2008 states

“Aquarion believes that if the Westport- Weston Family ‘Y’ facility is approved and constructed as proposed that it would not pose a significant risk to the public drinking water supply and would not jeopardize the health of our customers...”

“In our previous correspondence, Aquarion asked that the Town exercise caution in its review of the YMCA proposal, noting that there are ‘currently unanswerable questions’ regarding the possible affects to the water quality of Lee’s Pond and the Saugatuck River due to a hypothetical less-than optimally performing ‘alternative’ wastewater disposal system in this location, and the potential for such affects to impact the quality of the underlying public drinking water supply aquifer. Some opponents of this project have seized upon our request for a ‘prudent and circumspect’ review of possible alternatives for the proposed wastewater disposal system and have used it as a basis for alarmist statements claiming that Westport’s water supply and the public health would be imperiled by the construction of this facility. The lack of definitive scientific research pertaining to these ‘decidedly speculative’ concerns should not be construed as reason to conclude that a significant threat to the public health exists.”

“While Aquarion and the public drinking water supply industry cannot predict what we will learn in the future regarding these presently speculative concerns, based on our aforementioned research, Aquarion’s current understanding is that the proposed Westport-Weston Family ‘Y’ facility would not pose a threat to the public drinking water supply or the public health.”

Mr. Roach, representing Aquarion Water Company, wrote this letter to clarify his position from earlier letters where he raised some concerns about the FAST system. Mr. Roach wrote two previous letters dated 8/28/06 and 4/17/08 about this project, and while he urged that the Town be cautious in its review of the application at no time did he or Aquarion Water Company urge denial of the application or consider the project a threat to public health, safety or welfare.

It should be noted for the record that when the applicant first submitted their application in December 2007, the Mahackeno site was not located within the Aquifer Protection Overlay Zone (Level B mapping area). However, the Level A mapping requirement from the CTDEP was placed on the Westport Zoning Map effective

January 1, 2008. The withdrawal and resubmission of the application in June 2008 made the applicant's site subject to the Aquifer Overlay Protection Zone in the Westport Zoning Regulations. §44-2.1.2 of the Westport Zoning Regulations requires a report from the Conservation Commission and/or the Conservation Director. On June 20, 2008 Alicia Mozian, Conservation Director, provided a report to the Planning & Zoning Commission with respect to the aquifer regulations associated with this project. (See Document 1003 dated 6/20/08) Ms. Mozian writes:

"The Westport Weston Family Y property is not located within the "Level B mapping area". Though the Conservation Commission did consider the impact to the aquifer during its review of the proposal pursuant to their authority under the Inland Wetland and Watercourse Regulations and the Waterway Protection Line Ordinance, the existing Aquifer Protection Regulations were not applied as the property was not within the Level B mapping area. ...a portion of the Y property now falls within the new Aquifer Protection Area that came into effect on the official Zoning Map since the application's initial submission to your Commission. This new area is now known as the "Level A" mapping area ... "Once the new regulations are adopted the Family Y proposal will have to return to our office for a determination as to whether any regulated activities are proposed."

Attached to Ms. Mozian's memo is a letter from the CTDEP from Robert Hust, Supervising Environmental Analyst to Attorney Lawrence Weisman, dated May 14, 2008. Mr. Hust writes:

"According to the Department's knowledge of the YMCA project, which consists of the YMCA sports related land use activities, associated structures and the on-site discharge of domestic sewage, there is no proposed regulated activity under the Aquifer Protection Area Program...."

Based on testimony and information in the record about this subject the Commission finds that this project will not have an adverse impact on the public drinking water supply aquifer. Nonetheless, further requirements for this project as modified in this resolution will add additional protection for the environment.

27. **PARKING** The P&Z Commission finds that the required on-site parking for this proposal should be 267 spaces. Section 34-5 of the Westport Zoning Regulations is a chart that lists the required parking for a multitude of uses. Any use not specified in Section 34-5 can have its required parking determined by the Commission as part of site plan application. Information presented by the applicant in Document 11, dated 12/17/08 under Exhibit 3 provides the Commission with five different methods by which to calculate parking. These numbers range from a high of 431 spaces to a low of 258 spaces. The site plan as submitted by the applicant (Document 89) shows 336 spaces to be constructed. This includes 176 standard car spaces, 69 compact car spaces, 8 handicapped spaces, 60 overflow (pervious pavement) spaces, and 23 future (reserved grass) spaces. In a letter dated March 5, 2008 (Document 101) the applicant, Lawrence Weisman, notes on page 2

"... All comparisons – other local Y's and Staples High School – support our estimate that 250 spaces will be adequate for normal operations."

The Commission based its finding on parking after considering the parking experience at already existing Y's in nearby communities as well as the nature of the programming and activities planned for the Westport Y.

The Commission finds that the parking approved for this application is 267 spaces which includes:

Standard Spaces ---131

Compact Spaces -- 51

Handicapped Spaces -- 6

Overflow Spaces (Pervious Pavement) – 62

Reserve/Future (Reserved Grass) Spaces -- 17

In addition, the Commission approves the use of Valet Parking for up to 50 spaces.

28. **MEMBERSHIP CAP** The P&Z Commission finds that a cap on membership would be desirable as the number of members has an effect on certain impacts such as availability of parking, off-site traffic, septic system flow and general intensity of use, all standards which this Commission must consider.

The Commission finds that the traffic volume assumptions that drove the traffic analysis were based on a planned future membership of approximately 6,000 members. The applicant based traffic generation and volume assumptions for the build condition on the "*current activities in a 2005 setting...expanded by 33 percent to reflect anticipated activities by members in 2009.*" [Summary: Traffic Impact and Access Analysis. March, 2008, p. 4] Specifically, "*A 1.33 growth factor is employed to consider the future increase in membership holders from 5,695 currently to 8,000 by the horizon year 2009.*" [Future Site Traffic Generation – Spring Peak Hours, Table 1, Note 7. Frederick P Clark Associates, Inc. Updated March 3, 2008 in a communication to Mary Young, Deputy Director of Planning and Development from Michael A. Galante dated March 5, 2008]

The applicant was specific regarding what was to be considered a "future condition" for traffic generation. "*To represent a future condition with higher membership all activities included in the card-swipe program, the base data was increased by 33 percent. It is anticipated that all activities, including Day Care and gymnastics, would be included in this increased use of card-swipes at the new location. Furthermore, the analysis assumes membership will increase immediately upon opening of the new Y location, which is highly unlikely, since it is anticipated that the Y membership will increase over a period of time.*" [ibid. pp 3-4] In other words, no assumption can be made that the increase in membership of 33% represented only an *initial* increase as the applicant clearly indicates that the build in membership of 33% represented a build over time and was, in the applicant's words, one of a series of conservative estimates to represent future traffic generation at the site.

The final traffic report from Frederick P. Clark Associates (Document 275) dated 3/26/08 states on page 2; "*The new Y anticipates membership of 8,000 people.*" The entire traffic analysis is based on the figure of 8,000 people.

The CTDEP considered the membership figures when it approved the FAST system. The CTDEP approval can be found in Document 12 dated 12/17/07 as Exhibit D. On page 30 of Exhibit D the CTDEP writes:

“The maximum volume of wastewater discharge to be permitted would be 34,000 gallons per day, a peak flow that includes a safety factor of 10,000 gpd and that is not anticipated to occur on a daily or even frequently. The size and design of the treatment system, and the analysis of the site to accept this discharge, was based on this maximum rate. The applicant’s calculations for this volume, including projected growth in membership and use of the new Y were conservative.”

Based on the information regarding traffic and WWTS, the Commission finds that a membership cap of 8,000 people is reasonable and appropriate for the proposed development. Although the applicant has requested that if a cap were imposed that it be 10,000 members, the Commission finds that it is prudent at this time to limit the membership to 8,000.

29. **PUBLIC ACCESS** The P&Z Commission finds that providing public access on this site along the Saugatuck River is appropriate and consistent with the 2007 Westport Plan of Conservation and Development (POCD). On page 4-2 the POCD states

“In some instances, the land for the shoreway and riverway systems may have to be purchased and in other instances, such as those in non-profit ownership, negotiations would be made with the landowners for rights of passage.”

Camp Mahackeno is located at a junction where the 2007 POCD proposed a riverway along the Saugatuck River and the proposed trailway along the Merritt Parkway converge. The Mahackeno site provides a connection point between these two linear pathway systems. The applicant testified that it would be amenable to having some form of public access on the property, provided that persons using such access obtain some type of pass or other documentation provided to them by the Y. The applicant felt strongly that such a system would be required to insure safety and security of the facility and the camp. The Commission finds that the Camp Mahackeno site should 1) provide for public access as mentioned in the POCD; 2) that there shall be no parking for such access at the south end of the property near Rice’s Lane; and 3) that the Y shall be allowed to establish reasonable safety measures and protocols with respect to the use of such public access.

30. **SETBACKS** The P&Z Commission finds that this application complies with all required setback provisions with the Westport Zoning Regulation or that appropriate variances have been obtained with respect to other setbacks. This application received variances from the Zoning Board of Appeals on May 27, 2008 as part of Case #6726 (Document 905). Setback variances were granted for landscaping and buffer areas shown on the approved ZBA plan. Variances were also granted for the west side of the proposed main building. These variances were granted based on the condition that the applicant gain title to and legally abandon the easterly leg of Sunny Lane. The Commission finds that the P&Z staff should review all plans for required setbacks prior to the issuance of any zoning permits.
31. **RIPARIAN BUFFER** The P&Z Commission finds that the riparian buffer that was required by the Conservation Commission in conditions 44, 45 & 46 of their resolution of approval should be increased from the 20 feet required by the Conservation

Commission to 50 feet. The only exception to this increase would be in the area of the proposed sewage pump station. The Commission finds that the trees and ground cover provided by such buffers helps to renovate storm water and remove pollutants. Such a requirement is consistent with §44-5.4 of the Westport Zoning Regulations that site plan applications should make as an objective:

"The preservation of natural attributes and major features of the site such as watercourses, water bodies, wetlands, highly erodible areas, major trees, historic structures and scenic views both from the site and onto or over the site."

Also, Section 44-6.7 of the Special Permit standards states:

"Preserve important open space and other features of the natural environment related to the public health, safety and welfare"

Mr. Gary Dufel, of Stearns and Wheler, in a memo to the Commission dated April 19, 2008, pages 12 and 13 labeled "In Conclusion" in answer to Mr. Dufel's own question wrote in part:

"Can further steps be taken to reduce this impact further?"

- *Yes – some ideas:*
 - *Added biofiltration can be considered to treat much more of the drainage runoff.*
 - *...Biofiltration can be added along the shoreline of Lee's Pond at the interface where the wastewater effluent will enter the Pond to intercept the nitrogen and further reduce its impact on Lee's Pond."*

The Commission finds that the additional buffer beyond that which the Conservation Commission required will increase protection to Lees Pond, Poplar Plains Brook and the Saugatuck River.

32. **BUFFERS & LANDSCAPING** The P&Z Commission finds the landscape buffers shall be established and maintained along all residential property boundaries, where natural vegetation will not be retained, except in those areas granted variances by the ZBA pursuant to Section 35 of the Westport Zoning Regulations. The Commission further finds that white pines not be used in the buffer areas as they often do not provide adequate screening for adjacent property owners. All landscape plans shall be subject to final review by the P&Z Commission at a work session prior to the issuance of Zoning Permits.
33. **PROPERTY VALUES** The P&Z Commission finds that there will be no significant reduction in property values. The applicant presented a value impairment analysis prepared by Michael B. Gold Associates. See Document 11, Tab 2 page 14 dated 12/17/08 In the conclusion of this analysis Mr. Gold writes:

"Following my review of the Westport/Weston YMCA development proposal described herein, it is my opinion that the negative impact on the values of 8 and 10 Sunny Lane would be less than 5% and that there would be no measurable negative impact on other residential properties in the adjacent area."

On March 13, 2008, Mr. Gold testified before the Planning & Zoning Commission and made the following statement:

"In order for me to analyze the effect of the Y development, I pretty much followed the route of that rather dizzying visual, that aerial trip we just took. I visited all the perimeter streets, Sunny Lane, Twin Falls Lane, Rice's Lane. I went across the river to those streets where there are dwellings that would have some views direct, indirect of the Y property; Stone Drive, Calumet Lane, Richmondville Road. I also went to Quarter Mile Road north of the Merritt, and both from the Y site and from these properties as has already been stated this evening, there is fairly significant foliage, natural foliage, so that in none of these locations, in my opinion, would there be any significant visual impact. There are properties on Twin Falls Lane, to the north of Twin Falls Lane that currently backup to the Red Barn property, the cell tower. Other properties on Twin Falls Lane are fairly well screened from the proposed Y building. It's my opinion, and then you have the report from me, I believe. It's my opinion that the properties on those streets would suffer no significant adverse impact on their values."

Further the two properties cited in the applicant's reports as being impacted by the Y's development of the Mahackeno site, 8 & 10 Sunny Lane were both acquired by the Y. 8 Sunny Lane was acquired on June 2, 2008 and 10 Sunny Lane was acquired on June 25, 2008.

The Planning & Zoning Commission hired Patrick Wellspeak to conduct a peer review of Mr. Gold's analysis. Mr. Wellspeak's report is Document 514 dated 4/15/08. On page 5 Mr. Wellspeak writes:

"Excluding the issues noted above the analysis undertaken by Mr. Gold to appraise two properties that had similar detrimental condition to 8 & 10 Sunny Lane, under the hypothetical condition that this detrimental condition did not exist, does explain, substantiate and document the report conclusions."

Mr. Wellspeak states on page 3 of his peer review:

"In this regard specific properties that are considered to be potentially impaired should be identified. The report is entitled "Value Impairment Analysis – Adjacent Area Properties" and yet it appears that the value impairment analysis encompasses not only adjacent properties but conclusions that nearby properties are unimpaired. However, it is not clear whether the value impairment analysis was applied to all properties on nearby streets (such as Rice's Lane, River Lane, Calumet Road, Richmondville Avenue, Stone Road or Quarter Mile Road) or is it limited to specific dwellings on these streets. A specific identification of properties considered should be noted."

And further on Page 4:

"One issue that was not addressed, but appears to have been a significant point of concern for nearby residents is the issue of increased traffic in the area..."

“The question of whether or not this was considered in the report completed by Mr. Gold should be addressed as it may be an issue that affects character of the subject neighborhood. Likewise, the design of the proposed building should be addressed as to whether it meets the standard of being compatible and harmonious in design with the surrounding neighborhood.”

Among the reasons the Commission arrived at this finding on property values are:

- a. For over 60 years, the Mahackeno site has been used as a summer camp and there will be no increase in the number of attendees at the camp (360 campers per day as testified to by the applicant). Summer outdoor use will remain the same for camp.
- b. Most of the facility use, other than the camp, will be indoor use, with minimal increased activity outdoors.
- c. There will be no vehicle entrance via Rice’s Lane. Instead, this entrance will have a gate and be used for emergency vehicles only and will be blocked to pedestrian traffic.
- d. Although there will be some increased traffic on Wilton Road and the exit 41 connector road, mitigation proposed by the applicant including, additional traffic signalization and widening of the connector road will reduce congestion.
- e. The planned facilities and parking are set in the northwest section of a mature forested 30 acre site that allows for significant screening from surrounding neighbors to the east and south while the property itself is bordered by a restaurant and the Merritt Parkway on the west and north respectively.
- f. The WWFY building has been set into a hill, reducing the visual impact.
- g. The existence of a Y facility in the Town of Westport is an element of the Town environment, culture and character that contributes to the attractiveness of the Town and that enhances general property values in the entire community.
- h. Lighting within the building, along the building perimeter and in the parking areas will be controlled at night.

34. **COMMUNITY CHARACTER** The P&Z Commission finds that this application will not have an adverse impact on community character. Page 4-14 of the 2007 Plan of Conservation and Development States *“Encourage the establishment of new facilities or events to continue to strengthen town-wide and neighborhood sense of community.”* The Commission also considered §44-5.7 which states:

“That the location, size and design of any proposed building structure or use, as well as the nature and intensity of operations involved in or conducted in connection therewith, will be compatible and harmonious with the character and appearance of the surrounding neighborhood, and will not be hazardous or otherwise detrimental to the appropriate and orderly development or use of any adjacent land, buildings or structure as indicated by the exterior appearance of existing buildings (bulk, height, roof style, materials and color), their location on the site in relation to streets, parking and adjacent residences and their relationship to “the natural terrain, watercourses, water bodies, wetlands and vegetation.”

The Commission further finds that the Mahackeno site satisfies the requirements of §44-5.7 for the following reasons:

- a) The proposed development is isolated from other residential properties because it is buffered by the Merritt Parkway, Lees Pond and 25 acres of undeveloped land.
- b) The area already has a mixture of uses including a major limited access roadway, a pre-existing non-conforming restaurant use and cellular tower installation.
- c) The building is well screened and situated into the side of a hill which minimizes its mass and impact. The topography of the site also helps to further buffer the proposed development.
- d) The entrance to the property is immediately accessible to Exit 41 of the Merritt Parkway and thus provides access to and exit from the facility without all the traffic being directed into the local street network.
- e) This special permit use, like a majority of the special permit uses, in Westport, is located in a residential zone where such uses are permitted.
- f) The project as proposed includes 25 acres of managed open space.

35. **PROGRAMMING & EVENTS** Helene Weir, Chief Executive Officer, of the Westport Weston Family Y submitted a memo on May 29, 2008 (Document 870) that documents some of the limitations that the Y would consider on its activities. In this document, the Y agreed to following:

- a) *"Camp Mahackeno – 360 campers maximum per day*
- b) *Licensed Childcare – 100 children maximum per day*
- c) *Special Events – 24 events per year maximum that exceed 300 attendees or 200 cars*
- d) *Membership Cap – 10,000 members (to be revisited in five years from opening)*
- e) *Public Access - On-site only through registered visitors*
- f) *Riverwalk – Open to discussion*
- g) *Interior Lighting – Lights off between 12:00 AM [sic] and 5:00 AM. Blinds/shades to be installed along the south facing windows in the pool area*
- h) *Exterior Lighting – Will be designed to minimize intrusive lighting while maintaining safety. Lighting timers to be used except for emergency lights."*

The Commission was agreeable to all of the above conditions with the following modifications and additions:

- a) The membership cap will be set at 8,000 not 10,000. (See discussion in findings, **MEMBERSHIP CAPS**.)
- b) No more than one event as described above as Special Events shall occur on the same day.
- c) The coffee shop shall only be accessible by members or guests who have already passed through the turnstiles and have swiped their membership cards.
- d) There shall be no rental of the facilities or grounds to outside commercial entities and limited rental to non-profit entities.
- e) Plus the additional finding on **LIGHTING** specified below

36. LIGHTING The P&Z Commission finds pursuant to §44-5.5 that the applicant should undertake efforts to minimize lighting on the site to the greatest extent possible without jeopardizing public safety. On June 23, 2008 the Commission received a report from Leo Smith a lighting consultant. See Document 1006. In Mr. Smith's report on pages 7 & 8 he gives a series of recommendations that are summarized below:

- a) Use 55 watt induction lamps with motion sensors
- b) Reduce the number of fixtures in the west parking lot from 24 to 18
- c) Utilize the Illuminating Engineer Society's RP-33 standards that recommend minimum standards
- d) Use 360 degree external shields
- e) Use passive alternatives to lighting
- f) Use light blocking curtains for exterior windows
- g) Require all exterior lights to be fully shielded and down directed.
- h) Restrict façade lighting to the minimum requirement and prohibit lighting of architectural features.

The WWFY agreed to the recommendations of Leo Smith, lighting consultant, dated June 23, 2008.

The Commission finds all of the requirements listed above plus the additional requirements with respect to lighting listed below shall be incorporated into the final lighting plan:

- a) The lighting of outdoor courts and ball fields is prohibited.
- b) Interior Lighting – Lights shall be off between 12:00 midnight and 5:00 AM. Light blocking blinds/shades to be used along the south and east facing exterior windows between dusk and dawn.
- c) Exterior Lighting – Will be designed to minimize intrusive lighting while maintaining safety. Lighting timers to be used with motion sensors and all other outdoor lighting and must set to be off from 12 midnight until 5 a.m. Emergency lights are the exception.

37. SPECIAL PERMIT STANDARDS The P&Z Commission finds that the proposed application complies with the Special Permit standards found in §44-6 of the Westport Zoning Regulations. The Special Permit Standards are as follows:

- (1) Be in conformance with the Town Plan of [Conservation &] Development;

The P&Z Commission finds that this application is in conformance with the 2007 Westport Plan of Conservation and Development. Specifically, the Commission cites the following sections of 2007 POCD.

"The Town of Westport is always in the process of evolving. Each time the Planning and Zoning Commission strives to fulfill the mandate to produce a new Plan of Conservation and Development the Commission must look to the wise planning of the past to inform future planning. Whether expanding or contracting, it is normal and expected that a town will change in

order to thrive and maintain its identity. To meet the challenge of the needs Westport may face during the next decade and beyond, its leaders and citizens must undertake careful planning. They must neither ignore necessary changes nor sacrifice the essence of what has made Westport a unique and desirable place to live midst a natural New England setting.” Pg i

“Protection and improvement of water quality is the most important natural resource protection priority for Westport. Rivers, streams, lakes, ponds, wetlands, marshes, vernal pools and aquifers contribute to the overall health and quality of life in Westport and the region.” Pg 3-4

“Preservation of open space is an important issue to Westport residents. It will help protect natural resources; provide flood storage, wildlife habitat, and tree canopy; enhance overall community appearance; and enhance the quality of life of residents and visitors.”

“In addition to preserving open space where opportunities can be found, The Plan recommends, as a priority, that Westport strive over the long term to create a “greenway” system of open spaces and pathway connections:

- a “shoreway” - extending from Fairfield to Norwalk along and near Long Island Sound,*
- a “riverway” - from Long Island Sound to Weston along and near the Saugatuck River (and*
- a “trailway” - from Norwalk to Fairfield within the right-of-way of the Merritt Parkway.*

In some instances, the land for the shoreway and riverway systems may have to be purchased and in other instances, such as those in non-profit ownership, negotiations would be made with the landowners for rights of passage. Where adjacent land is not available, connections will have to be made with sidewalks and bicycle paths along and near road...

“The greenway strategies along waterways build on the open space resources most prized by residents and seek ways to make them even better. The trailway along the Merritt Parkway, while requiring cooperation with adjacent towns to create a viable system, will provide additional open space and recreational opportunities for residents of Westport and the region.” Pg 4-2

“Unique facilities such as public and private arts and theater facilities and organizations add immeasurably to the overall ambience and quality of life in Westport. Efforts to develop, improve, and maintain performance and exhibition facilities should be supported and encouraged in order to enhance the overall community.

Similarly, the unique events that occur in Westport such as concerts at the Levitt Pavilion, First Night on New Years Eve, and festivals and events sponsored by private organizations help support the overall concept of community and the shared experience of living in Westport. These types of facilities, programs and events should be supported and encouraged in order to enhance vibrancy and connections amongst residents in

the community. The governmental, volunteer, and non-profit organizations which help make all of this happen should be supported and encouraged.” Pg 4-10

*“Identify and preserve scenic views, scenic roads, and scenic features (such as stone walls, barns, fences and tree canopies.)”
Pg 4-12*

*“• Special Permit uses in residential zones must be reviewed to ensure that they are still suitable for neighborhoods, especially since so little undeveloped property remains.
• Review Special Permit criteria and enforce the Special Permit standards to meet the regulations.” Pg 5-2*

“Maintenance of Large Septic Systems - In 2006, the Town adopted an ordinance requiring that large septic systems (more than 5,000 gallons per day) establish and maintain both an “operation fund” (to fund the cost of operating the system for a five-year period) and an “emergency fund” (to repair the system if it should fail) as well as provide additional protections.” Pg 10-3

The Commission finds that with appropriate conditions this project is consistent with 2007 POCD in particular, the sections cited above.

(2) Not prevent or inhibit the orderly growth and development of the area;

The P&Z Commission finds this project will not prevent or inhibit the orderly growth and development of the area. Specifically, the Commission finds that reasonable conditions will help avoid any such impacts. These conditions include but are not limited to:

- a) Caps on members, campers and daycare users
- b) Traffic and roadway improvements
- c) Restrictions on special events
- d) Restricting access to a single point of entry

The Commission noted that Westport is 97% developed and that growth and infill development is a normal part of the Town’s development.

(3) Not have a significant adverse effect on adjacent areas located within the close proximity to the use;

The Commission finds that with appropriate conditions this project will not have a significant adverse effect on adjacent areas located within the close proximity to the use. These conditions include:

- a) Adding evergreen buffers near adjoining residential properties and retaining existing buffers.
- b) Minimizing exterior lighting

- c) Using shades or blinds on south facing windows
- d) Restricting access to a single point of entry on Sunny Lane
- e) Establishing limits on special events
- f) Restricting the hours of operation
- g) Limiting the number of on-site parking spaces

(4) Not interfere with pedestrian circulation;

The Commission finds that this project will not interfere with pedestrian circulation. However, sidewalks and bike paths to and from the Sunny Lane entrance to the site are recommended.

(5) Not have a significant adverse effect on safety in the streets nor unreasonably increase traffic congestion in the area, nor interfere with the pattern of highway circulation.

The Commission finds that with appropriate conditions this project will not have a significant adverse effect on safety in the streets nor unreasonably increase traffic congestion in the area, nor interfere with the pattern of highway circulation. These conditions include:

- a) The applicant must accept the costs associated with the required mitigation associated with this project.
- b) The applicant must complete all the traffic improvements that are part of this application including offsite mitigation.

(6) Not have a significant adverse effect on historical, archeological and/or paleontological sites;

The Commission finds that this project will not have a significant adverse effect on historical, archeological and/or paleontological sites.

(7) Preserve important open space and other features of the natural environment related to the public health, safety and welfare;

The Commission finds that with appropriate conditions this project will preserve important open space and other features of the natural environment related to the public health, safety and welfare. These conditions include:

- a) Requiring a 50 ft riparian buffer
- b) Making appropriate modifications to the WWTS, including a membrane and phosphorous removal system.
- c) Creating a non-development area on the south half of the property as suggested by the applicant.
- d) Adding more monitoring wells near the shore of Lees Pond to check for nitrogen and phosphorous. There shall be a minimum of 6 monitoring wells on site pursuant to condition 21 of the Conservation Commission resolution.

- e) Have the WWTS reviewed annually by independent consultants.

- (8) Not obstruct significant views which are important elements in maintaining the character of the Town or neighborhood for the purpose of promoting the general welfare and conserving the value of buildings;

The Commission finds that this project will not obstruct significant views.

The Commission recommends that the applicant undertake measures to screen and maintain screening of this project from the Merritt Parkway and confer with the Merritt Parkway Conservancy in an effort to maintain its historic characteristics. The Merritt Parkway is listed on the National Register of Historic Places.

- (9) Not have a significant adverse effect on storm drainage, sewage disposal or other municipal facilities;

The Commission finds that this project with appropriate conditions will not have a significant adverse effect on storm drainage, sewage disposal or other municipal facilities. Storm water will be attenuated through the applicant's proposals, Conservation Commission conditions and added biofiltration. The Commission notes that this application is subject to the "Private On-Site Wastewater Disposal Systems (POWDS)" ordinance that was adopted by the RTM on December 5, 2006. The purpose of the ordinance is to protect the public health, safety and welfare of Westport residents by assuring proper maintenance and repair of privately owned and operated on-site wastewater disposal systems that discharge large amounts of effluent into the ground waters or surface waters within the Town of Westport. It applies to all on-site wastewater disposal systems serving one or more structures that have a design flow in excess of 5000 gallons per day and that are owned, operated or maintained by a non-governmental entity. In addition, the CT Department of Environmental Protection permitting requirements and the Westport Conservation Commission conditions of approval along with additional requirements discussed herein will aid in controlling pollution of the environment.

- (10) Be in scale with and compatible with surrounding uses, buildings, streets and open spaces.

The Commission finds that with appropriate conditions this project will be in scale with and compatible with surrounding uses, buildings, streets and open spaces. These conditions include:

- a) Establishing limits on special events
- b) Requiring that all parking for this facility be accommodated onsite.

- c) Maintaining all required vegetative buffers.
- d) Provide annual reports to the P&Z Director on membership, parking lot usage and events.

38. **POCD ISSUES** On December 15, 2007 the 2007 Westport Plan of Conservation and Development became effective. Pursuant to §44-6 (1) of the Westport Zoning Regulations all Special Permit Uses must “*Be in conformance with the Town Plan of Development.*” The Planning & Zoning Commission finds that this project is consistent with the 2007 POCD for the reasons in findings, **SPECIAL PERMIT STANDARDS**, found herein.

39. **22a-19 ENVIRONMENTAL INTERVENTION BY Y DOWNTOWN** Pursuant to Connecticut General Statute Section 22a-19 an Environmental Intervention petitions was filed on this application by:

Y Downtown, Inc. c/o Debbie McGinley and Indy Goldberg both of Westport, Connecticut filed an Amended Notice of Intervention on March 26, 2008 (Document 278)

With regard to this petition, the P&Z Commission finds that:

- a) The intervener is an appropriate party to intervene;
- b) The intervener has filed a verified pleading; and
- c) The pleading alleges a number of claims that are consistent with Section 22a-19 of the Connecticut General Statutes and within the scope of the Commission’s jurisdiction, except as noted below.

The intervener asserts that this proceeding involves conduct, which is reasonably likely to have the effect of unreasonably polluting, impairing, or destroying the public trust in the air, water or other natural resources of the State. Specifically, the intervener Y Downtown makes the following claims:

- a) The probability and danger of pollution of the waters of the state including but not limited to watercourses, wetlands and aquifers and specifically the following:
 - The impairment of the waters of Poplar Plains Brook from storm drainage including but not limited to sedimentation and erosion damage and from sewage disposal and from the discharge of other contaminants into the waters of Poplar Plains Brook.
 - The impairment of the waters of the Saugatuck River from storm drainage including but not limited to sedimentation and erosion damage and from sewage disposal and from the discharge of other contaminants into the waters of the Saugatuck River.
 - The impairment of the aquifer over which at least a portion of the project lies with resultant pollution to the public water supply served in part by the aquifer

The Commission finds based on evidence on the record along with the modifications proposed by this resolution, the proposed activity will not have the effect of unreasonably impairing or polluting the Saugatuck River, Poplar Plains

Brook or ground water. Specifically, the Commission finds that adequate protections will be in place to prevent such pollution from entering the receiving waters. These measures include: adding of a membrane to the WWTS to capture pollutants, adding a precipitate to the waste water effluent to reduce phosphorous output, increases of the riparian buffers to 50 feet in width, increased biofiltration and a program of monitoring pollution levels through a series of monitoring wells. Further the Commission finds that the proposed conduct by the applicant will not cause unreasonable pollution, impairment or destruction of the public trust in the air, water or other natural resources of the state.

- b) The probability and danger of impairment to the air quality by contributing to and increasing contaminants discharged into the air by increased traffic in the area.

The Commission finds based on evidence on the record along with the modifications proposed by this resolution, the proposed activity will not have the effect of unreasonably impairing or polluting the air or other natural resources of the state. Specifically, the Commission finds that such measures include road widening and traffic signal timing to maintain adequate levels of service and reduce automobile idling. The Commission is also requiring limitations on WWFY membership to control traffic and vehicular trips to and from the site.

- c) The probability and danger to public health, safety and welfare by the removal of numerous trees which will result in a failure to preserve important open space and other features of the natural environment.

The Commission finds based on evidence on the record along with the modifications proposed by this resolution, the proposed activity will not have the effect of unreasonably impairing or impacting the natural resources of the state or the Town. Specifically, the Commission finds that this project will not have adverse environmental impacts due to tree removals because a significant number of trees will be replaced, a 50 foot riparian buffer will be established adjacent to Lees Pond and Poplar Plains Brook and up to 25 acres of managed open space will remain on site. Additionally, the Commission notes Conservation Commission conditions 45 & 46 that require the replanting of any trees removed from the site over 8 inches in diameter with trees of at least 3 to 5 inches in diameter.

- d) The probability and danger that an excess amount of nitrogen will be released into the wastewater.

The Commission finds based on evidence on the record along with the modifications proposed by this resolution, the proposed activity will not have the effect of unreasonably impairing or polluting the wastewater. Specifically, the Commission finds that there will be some release of nitrogen but it finds that it will not be excessive or cause significant adverse impact. The Commission notes that the proposed WWTS is a denitrification system and that it will be monitored by both the CTDEP and the Conservation Commission. Further, the Commission

is requiring the installation of a membrane to further reduce the impacts of nitrogen and this resolution specifically requires that the nitrogen levels at the monitoring wells shall not exceed 10 mg/l.

e) The probability and danger of excessive phosphorous in the wastewater.

The Commission finds based on evidence on the record along with the modifications proposed by this resolution, the proposed activity will not have the effect of unreasonably impairing or polluting the water. Specifically, the Commission finds that due to the evidence in the record on the nature of the soils and the distance for the phosphorous to travel through the soil, it is highly improbable that phosphorous will reach the river. The Commission notes that contained within this resolution is a condition that a precipitate be added to the effluent to capture and reduce phosphorous levels. The Commission notes that the proposed WWTS will be monitored by both the CTDEP and the Conservation Commission. Further this resolution specifically requires that the phosphorous levels at the monitoring wells shall not exceed 0.7 mg/l.

f) The probability and danger of increased illumination pollution and noise pollution to the surrounding area.

The Commission finds based on evidence on the record along with the modifications proposed by this resolution, the proposed activity will not have the effect of unreasonable illumination or noise pollution, due to the evidence in the record on the orientation of the building and its proximity to surrounding uses. This resolution will require that the WWFY use the following measures to control light pollution: a) Use 55 watt induction lamps with motion sensors , b) reduce the number of fixtures in the west parking lot from 24 to 18, c) utilize the Illuminating Engineer Society's RP-33 standards that recommend minimum standards, d) use 360 degree external shields, e) use passive alternatives to lighting, use light blocking curtains for exterior windows, f) require all exterior lights to be fully shielded and down directed, g) restrict façade lighting to the minimum requirements and prohibit lighting of architectural features. Further this resolution requires that the WWTS control building will be insulated to control noise.

The Commission's findings with regard to the intervener, Y Downtown, LLC's petition are based upon the Commission's review of the application, proposed modifications, the CT DEP approvals, the Westport FECB approval, the Westport Conservation Commission approval with 57 conditions, the testimony and record presented during the public hearings, and with consideration given to the conditions of approval included in this resolution.

40. **22a-19 ENVIRONMENTAL INTERVENTION BY ARTHUR COHEN** Pursuant to Connecticut General Statute Section 22a-19 an Environmental Intervention petition was filed on this application by:

Arthur Cohen, residing at 67 Old Hill Road, Westport, Connecticut filed a Notice of Intervention on March 13, 2008 (Document 197)

With regard to this petition, the P&Z Commission finds that:

- a) The intervener is an appropriate parties to intervene;
- b) The intervener has filed a verified pleading; and
- c) The pleading alleges a number of claims that are consistent with Section 22a-19 of the Connecticut General Statutes and within the scope of the Commission's jurisdiction, except as noted below.

The intervener asserts that this proceeding involves conduct which is reasonably likely to have the effect of unreasonably polluting, impairing, or destroying the public trust in the air, water or other natural resources of the State. Specifically, the intervener Arthur Cohen makes the following claims:

- a) The danger that an excess amount of nitrogen would be released in the wastewater.

The Commission finds based on evidence on the record along with the modifications proposed by this resolution, the proposed activity will not have the effect of unreasonably impairing or polluting the water. Specifically, the Commission finds that there will be some release of nitrogen but it finds that it will not be excessive or cause significant adverse impact. The Commission notes that the proposed WWTS is a denitrification system and that it will be monitored by both the CTDEP and the Conservation Commission. Further, the Commission is requiring the installation of a membrane to further reduce the impacts of nitrogen and this resolution specifically requires that the nitrogen levels at the monitoring wells shall not exceed 10 mg/l.

- b) The danger of excessive phosphorous in wastewater.

The Commission finds based on evidence on the record along with the modifications proposed by this resolution, the proposed activity will not have the effect of unreasonably impairing or polluting the water. Specifically, the Commission finds that due to the evidence in the record on the nature of the soils on this site and the distance for the phosphorous to travel through the soil, in order to reach the river, it is highly improbable that phosphorous will reach the river. The Commission notes that contained within this resolution is a condition that a precipitate be added to the effluent to capture and reduce phosphorous levels. The Commission notes that the proposed WWTS will be monitored by both the CTDEP and the Conservation Commission. Further this resolution specifically requires that the phosphorous levels at the monitoring wells shall not exceed 0.7 mg/l.

- c) The danger of excessive emerging contaminates in the water supply.

The Commission finds based on evidence on the record along with the modifications proposed by this resolution, the proposed activity will not have the effect of unreasonably impairing or polluting ground water. Specifically, the Commission finds adequate protections will be in place to prevent such pollution from entering the receiving waters. These measures include: adding of a membrane to the WWTS to capture pollutants, adding a precipitate to the waste

water effluent to reduce phosphorous output, increases of the riparian buffers to 50 feet in width, increased biofiltration and a program of monitoring pollution levels through a series of monitoring wells.

d) The danger to the water quality of Poplar Plains Brook.

The Commission finds based on evidence on the record along with the modifications proposed by this resolution, the proposed activity will not have the effect of unreasonably impairing or polluting Poplar Plains Brook. Specifically, the Commission finds that adequate protections will be in place to prevent such pollution from entering the receiving waters. The Commission notes the additional requirements of this resolution with respect to increases in the riparian buffers for this site and increased provisions for biofiltration.

e) Numerous excessive water quality contaminants being discharged into the ground in which little purification is expected.

The Commission finds based on evidence on the record along with the modifications proposed by this resolution, the proposed activity will not have the effect of unreasonably impairing or polluting ground water. Specifically, the Commission finds that adequate protections will be in place to prevent such pollution from entering the receiving waters. The Commission finds that the protections and requirements contained within this resolution including limitations on nitrogen and phosphorous levels will provide adequate protection to water quality. This is evidenced by documents and testimony from the Town's consultants as well as comments received from representatives of the Aquarion Water Company.

f) The reduction in the destruction of bacteria in ground water.

The Commission finds based on evidence on the record along with the modifications proposed by this resolution, the proposed activity with adequate protections that will be incorporated within the WWTS adequately address bacterial contamination. Further, the Commission finds that the interveners presented no evidence of this project causing increased bacteria levels in nearby ground water.

g) The lack of assurances as to the validity of the environmental data presented and the need for a Quality Assurance Project Plan.

The Commission finds based on evidence on the record along with the modifications proposed by this resolution, the proposed activity will not have the effect of causing unreasonably pollution. Specifically, the Commission finds there are adequate protections in place through the POWDS ordinance to address this issue. The Commission further notes that based upon documents and testimony from its own consultants that the environmental testing data presented by the applicant appeared to be within reasonable limits.

- h) The danger to the environment that result from activity in the vicinity of an aquifer.

The Commission finds based on evidence on the record along with the modifications proposed by this resolution, the proposed activity will not have the effect of causing unreasonable pollution. Specifically, based on testimony and documents on the record there will not be an impact on the public drinking water supply aquifer. The Commission further notes that based upon documents and testimony from its own consultants and comments from the Aquarion Water Company that this activity poses no threat to the public drinking water supply aquifer.

- i) That certain permits relating to environmental activities were granted as result of improper conduct of certain government personnel.

The Commission finds that this is not a valid environmental impact to be considered pursuant to CGS 22a-19 and not within this Commission's jurisdiction. There is no evidence of any misconduct by the Commission in the record.

- j) The danger of an increase in air pollution as a result of activity of the proposed project.

The Commission finds based on evidence on the record along with the modifications proposed by this resolution, the proposed activity will not have the effect of unreasonably impairing or polluting the air or other natural resources of the state. The Commission finds that the incremental increases in traffic will not adversely effect air quality. Specifically, the Commission finds that such measures include road widening and traffic signal timing to maintain adequate levels of service and reduce automobile idling. The Commission is also requiring limitations on WWFY membership to control traffic and vehicular trips to and from the site.

The Commission's findings with regard to the intervener, Arthur Cohen's petition are based upon the Commission's review of the application, proposed modifications, the CT DEP approvals, the Westport FECB approval, the Westport Conservation Commission approval with 57 conditions, the testimony and record presented during the public hearings, and with consideration given to the conditions of approval included in this resolution.

41. The Planning and Zoning Commission conducted a field trip to the property on March 4, 2008.

42. The P&Z Commission finds that reasonable conditions and limitations are necessary to insure that this project does not have an adverse impact. Page 5-2 of the POCD states:

"Special Permit uses in residential zones must be reviewed to ensure that they are still suitable for neighborhoods, especially since so little undeveloped property remains."

NOW THEREFORE, BE IT RESOLVED that **4, 5, 11, and 14 Sunny Lane:** Appl. #08-057 by Lawrence P. Weisman for property owned by Young Men's Christian Association for a Special Permit and Site Plan approval for construction of a new YMCA building and amenities/parking/approved septic in a Res AAA, Map B13/C13, Lots 25, 23, 11, 2 be **GRANTED** subject to the conditions listed below:

CONDITIONS

1. **APPROVED PLANS** Conformance to the plans listed below as modified herein prior to the issuance of a Zoning Permit for this project pursuant to the conditions listed below relating to parking, lighting, landscaping and traffic improvements:
 - a. "Westport/Weston Family- YMCA, Westport, CT, Existing Conditions", Scale 1"=40'-0", dated 03/17/06 and last revised to 4/19/06, prepared by Land-Tech Consultants, Inc., sheets C-001, C-002 and C-003. Document #34 received on 1/22/08.
 - b. "Westport/Weston Family- YMCA, Westport, CT, Perimeter Survey", Scale 1"=40'-0", dated 03/17/06 and last revised to 4/19/06, prepared by Land-Tech Consultants, Inc., sheets C-001, C-002 and C-003. Document #34 received on 1/22/08.
 - c. "Westport/Weston Family- YMCA, Westport, CT, Site Plan", Scale 1"=100'-0", dated 04/08/08, prepared by Redniss & Mead. Document #457 received on 4/9/08.
 - d. "Westport/Weston Family- YMCA, Westport, CT, Grading and Utilities", dated 03/17/06 and last revised to 12/11/07, Scale 1"= 40', prepared by Land-Tech Consultants, Inc., Sheets C-210, C-211 and C-212. Document #22 received on 12/17/07.
 - e. Westport/Weston Family- YMCA, Westport, CT, Erosion and Sediment Control Plan", dated 03/17/06 and last revised to 12/11/07, Scale: as shown, prepared by Land-Tech Consultants, Inc., Sheet C-230, C231, C232 & C233. Document #22 received on 12/17/07.
 - f. "Westport/Weston Family- YMCA, Westport, CT, Details", dated 03/17/06 and last revised to 12/11/07, no scale, prepared by Land-Tech Consultants, Inc., Sheet C-400 and C-401. Document #22 received on 12/17/07.
 - g. Architectural Plans entitled; "Westport/Weston Family Y, Westport, Connecticut", dated March 30, 2006, Scale 1/16"= 1'-0", prepared by Robert A.M. Stern Architects, LLP, Sheets A-100, A-101, A-201, A-202, A-203, and A-301. Document #20 received on 12/17/07.
 - h. "Westport/Weston Family- YMCA, Westport, CT, Preliminary Landscape Plan", Revised to 5/28/08, Scale 1"= 40', prepared by Andropogen Associates, Ltd., Sheets L501A and L502. Document #856 received on 5/29/08.
 - i. "Westport/Weston Family- YMCA, Westport, CT, Existing Tree Locations & Proposed Site Improvements", dated 01/18/08, Scale 1"= 40', prepared by Land-Tech Consultants, Inc. Document #169 received on 3/12/08.
 - j. Improvement Plans to Interchange 41, Merritt Parkway, Scale 1"=40'-0", dated 03/17/06 and last revised to January 2008, prepared by Land-Tech Consultants, Inc., 9 sheets. Document #28 received on 12/17/07.
 - k. "Westport/Weston Family- YMCA, Westport, CT, Lighting Plan", dated 04/19/06, Scale 1"=40', prepared by Andropogen Associates, Ltd., Sheet L401. Document #252
 - l. Proposed Average Grade Calculations dated 03/13/08, prepared by Robert A.M. Stern Architects, LLP, Sheet C-211. Document #185

- m. Site Plan – Zoning Average Grade Calculations dated 03/07/08, prepared by Robert A.M. Stern Architects, LLP, Sheet A-501-Z. Document #186.
 - n. Exterior Elevations – Zoning Average Grade & Building Height dated 03/07/08, , prepared by Robert A.M. Stern Architects, LLP, Sheets A-201-Z & A-302. Document #187.
 - o. “Westport/Weston Family- YMCA, Westport, CT, Proposed Septic System Control Building”, dated 03/24/08, Scale as noted, prepared by Land-Tech Consultants, Inc., 2 Sheets. Document #381
2. **PRIOR APPROVALS** This application must comply with the previous approvals of other relevant local and state agencies. These approvals are as follows but not limited to:
- A. The Westport Flood & Erosion Control Board, approval dated 10/12/2006
 - B. The Westport Conservation Commission, approval dated 5/7/2006
 - C. The Connecticut Department of Environmental Protection, approval dated 2/23/07
 - D. The Architecture Review Board, approval dated 3/11/08
 - E. The Zoning Board of Appeals, approval dated 5/27/08
3. **ANNUAL REPORT** The WWFY shall submit on an annual basis (by January 31st of each year)membership figures to the P&Z Director indicating the following:
- A. The total membership of the WWFY has not exceeded 8,000 members.
 - B. The total number children served by the on-site child care center has not exceed 100 children per day
 - C. The total number of campers at Camp Mahackeno has not exceeded 360 campers per day.
4. **LIGHTING** The lighting plan noted above in Condition 1k for the facility shall be modified using Mr. Leo Smith’s recommendations dated 6/23/08 and additional modifications as stated in the finding, **LIGHTING**.
- A. On all exterior lighting use 55 watt induction lamps that are fully shielded and down directed with motion sensors & timers.
 - B. Reduce the number of fixtures in the west parking lot from 24 to 18.
 - C. Utilize the Illuminating Engineer Society’s RP-33 standards that recommend minimum standards of light levels.
 - D. Use 360 degree external shields.
 - E. Use passive alternatives to lighting
 - F. Use light blocking shades/blinds for exterior windows facing south and east between dusk and dawn.
 - G. Limit façade lighting to the minimum requirement needed for safety. There shall be no uplighting of architectural features.
 - H. The lighting of outdoor courts and ball fields shall be prohibited.
 - I. Interior Lighting – Lights shall be off between 12:00 midnight and 5:00 AM. Light blocking blinds/shades to be used along the south and east facing exterior windows between dusk and dawn.
 - J. Exterior Lighting – Will be designed to minimize intrusive lighting while maintaining safety. Lighting timers to be used with motion sensors and all other outdoor lighting and must set to be off from 12 midnight until 5 a.m. Emergency lights are the exception.
5. **SPECIAL EVENTS** The WWFY shall be limited to a maximum of 24 special events per year. Special events shall mean any event that generates over 300 attendees or 200 cars and shall be limited to those found on the annual list. The WWFY shall submit to the

P&Z Office on annual basis (by January 31st of each year) a list and schedule of special events for the upcoming 12 months. This list and schedule may be modified by notifying the Planning & Zoning Director in writing at least 7 days in advance but the maximum number of events cannot be changed.

6. **PARKING** It is the WWFY's continuing responsibility and obligation to operate and schedule its programs and activities in a manner that does not result in parking related to its programs overflowing onto nearby streets or on to vegetated areas of the WWFY land. The WWFY shall monitor the level of parking and shall keep clear and legible records of its monitoring logs covering the current year and at least two preceding years. These shall be sent to the Planning Director by January 31 of each calendar year. The applicant shall revise all plans to include 267 parking spaces, pursuant to the findings on **PARKING**, contained herein. In addition to the required parking spaces the applicant may implement valet parking for special events to minimize impervious coverage. The Commission recommends that the applicant's proposed parking spaces along the Merritt Parkway be eliminated for safety. The WWFY shall submit for approval by the Commission at a Work Session a final parking layout plan, including a layout for valet parking spaces. When an event or the daily use of the Y is expected to exceed the capacity of the available parking spaces, a commercial parking company must be employed to operate valet parking in the western parking lot only. This shall be based on the latest plans submitted by the applicant.
7. **TRAFFIC** The WWFY shall submit a final traffic impact mitigation plan to the P&Z Office after the State Traffic Commission (STC) has completed its review. The WWFY shall be required to pay for a peer review of the final traffic mitigation plan by the Town's traffic consultant to insure that all of the recommendations made by the Town's consultant have been implemented to the extent that they are approved by the STC. The WWFY shall be financially responsible for costs resulting from any incremental traffic improvements that are required as a result of this project; including but not limited to retiming of traffic signals, installation of new traffic signals, roadway widenings, turning lanes and other such required improvements as submitted by the applicant and modified and approved by the STC that are needed as a direct result of the associated increase in traffic from the WWFY project. Specifically the WWFY must complete the following:
 - a) An analysis of the Route 33/Route 57 Intersection, to clarify the discrepancies between the analysis by the two traffic consultants and the sources used which must be rectified to demonstrate that a LOS E or better will be maintained with signalization changes to this intersection. Since this intersection, prior to the WWFY application, has shown significant delays during peak periods, the Commission recommends that the Town of Westport and the State DOT work together to make physical modifications to further reduce delays.
 - b) The State Route 33/Partrick Road intersection will require an updated signal warrant analysis to be reviewed by the STC.
 - c) The timing of the signalized intersections at Route 33/Merritt Parkway south bound ramps, Route 33/Merritt Parkway connector road and Merritt Parkway connector road/Merritt Parkway north bound ramps are to be modified as proposed by the applicant and updated by the peer review conducted during the hearing.
 - d) The Commission strongly recommends that the timing of the signalized intersection at Route 33/Route 57 be modified as proposed by the applicant and updated by the peer review conducted during the hearing.

8. **HOURS OF OPERATION** The operating hours for the WWFY shall be 5 AM-11PM. The lights in the building shall be turned off at 12 AM daily, except for required emergency lighting. The WWFY shall use timers or similar devices to insure compliance with this condition.
9. **COFFEE SHOP** The coffee shop shall only be accessible by members or guests who have already passed through the turnstiles and have swiped their membership cards.
10. **RENTAL TO OUTSIDE GROUPS** There shall be no rental of the facilities or grounds to outside commercial for profit entities. Other rentals must have approval of the Planning & Zoning Director, or the Administrative Review Committee (ARC), or the Planning & Zoning Commission.
11. **ACCESS FROM RICE'S LANE** All vehicular access to this site except for emergency service vehicles shall be via Sunny Lane. A gate or gates shall be installed on the south side of the property to prevent such access from Rice's Lane and River Lane except by emergency service vehicles. The applicant shall not provide parking facilities for public access at the south end of the property near Rice's Lane. There will be no vehicular access from Rice's Lane and River Lane pursuant to P&Z resolution #80-70 dated July 30, 1980.
12. **PUBLIC ACCESS** The Mahackeno site should 1) provide for public access as mentioned in the POCD and agreed to by the applicant and 2) the Y shall be allowed to establish reasonable safety measures and protocols with respect to the use of such public access. The WWFY shall file an open space access easement on the Westport Land Records for the public access along the Saugatuck River described herein in findings, **PUBLIC ACCESS**.
13. **BUFFER PLANTINGS**
 - a) The riparian buffer required by the Conservation Commission in its resolution of approved in Conditions 44 thru 46 of this resolution shall be expanded from 20 feet to 50 feet except in the area of the proposed sewage pump station. A pervious walking path may be constructed through the riparian buffer if reviewed and approved by the Conservation Department. All requirements imposed by the Conservation Commission for this area shall be applied to this additional buffer area.
 - b) An evergreen buffer will be established near the septic fields behind the first house on Rice's Lane where tree removal is proposed. Evergreen buffers to buffer neighboring properties (including buffering the parking area) may not include white pines and must meet section 35-2.4 of the zoning regulations.
 - c) As recommended by the Merritt Parkway Conservancy, the WWFY shall work with CTDOT to increase buffer plantings with respect to the redesign of the Exit 41 interchange, including the use of Merritt guiderails as described in the Merritt Parkway Landscape Master Plan, plant materials being used in the proposed landscaped traffic island and buffering on the north side of Sunny Lane, features which will support the Merritt Parkway, as a historic resource.
14. **WASTE WATER TREATMENT SYSTEM (WWTS)** The WWTS design shall be modified to include a membrane as recommended by the Town's consultant Stearns & Wheler. Any modifications to the WWTS must be submitted to CTDEP. The WWTS shall be further modified to include a system of adding a precipitate to the effluent to facilitate the removal of phosphorous from the waste water effluent. These modifications shall be reviewed and approved as part of the peer review of the final septic system design described in condition #27 of the Conservation Commission's resolution of approval. Additionally:

- a. One entity must take responsibility for the design and functioning of the entire WWTs system with the future operator present during design. The designer and operator's name must be submitted to the Planning and Zoning Director prior to a zoning permit and updated as necessary.
 - I. Odor control devices must be installed in the system and work effectively.
 - II. A backup denitrification filter must be installed to accommodate cleaning the system.
 - III. Install a backwash storage tank for the filters.
 - IV. All serviceable areas of the WWTs system must be accessible for maintenance.
 - V. The system must continue running during maintenance
 - VI. Modify the septic system control building plans to show insulation to prevent noise outside the building.
- b. Wastewater flow shall be no more than 34,000 gallons per day.
- c. No more than 0.7 mg/l of Phosphorous can be present following denitrification at the monitoring wells.
- d. No more than 10 mg/l of nitrogen can be present following denitrification at the monitoring wells.
- e. The Planning and Zoning Director shall receive all data and reports sent to the Conservation Director regarding the WWTs system.
- f. The P&Z director may hire a consulting firm paid for by the WWFY to review data and recommend action in the event that any of the above listed conditions have not been met.

15. **BIOFILTRATION** The planted area between the parking rows will act as a biofiltration system. In addition, the reserve parking areas shall also be used for biofiltration. Appropriate plans must be revised to show the types of plants, the manner which the biofiltration system will be built and the system's capacity. Parking will be graded toward this planted area. Overflow from the biofiltration area will be directed to the storm water infiltrators. Additional biofiltration, for the purpose of intercepting nitrogen, shall be added along the shores of Lees Pond at the interface where the wastewater effluent will enter the pond.

- a) The final design details for the rain garden (and any biofilters and riparian buffers) shall be submitted to the P&Z Director for review and approval. These details shall include: construction details, materials plan and a maintenance plan.
- b) The approved rain garden (and any biofilters and riparian buffers) shall be maintained by the WWFY in perpetuity, and because of the necessary environmental benefits they provide they shall not be significantly altered or modified without approval of the P&Z Director.
- c) On an annual basis for a period of 3 years following the initial operation of the WWFY, an annual report shall be submitted to the P&Z Director by an environmental consultant who shall have analyzed the effectiveness of the systems, maintenance necessary, and any recommendations for enhancements. If the reports show appropriate operating levels after 3 years, the P&Z may end the sampling reports, or alter the period of submittals. If the results are unsatisfactory, the P&Z may extend the period of reporting and may require enhancements for the purposes of protecting ground and surface water resources.

16. **STORM WATER MAINTAINANCE PLAN** Prior to issuance of a Zoning Permit, a separate maintenance plan shall be submitted by the applicant as recommended by the

Engineering Department, that includes, but is not limited to, procedures for cleaning out the water quality devices.

17. **SITE MONITOR** The site monitor as specified in condition # 54 of the Conservation Commission resolution shall prepare and submit monthly inspection reports to the P&Z and Conservation staff for the duration of the construction project.
18. **EMERGENCY ACCESS DRIVE** The emergency access driveway from Rice's Lane shall be constructed on permeable pavers as approved by the Conservation Department and the Fire Department and shall be maintained for safety.
19. **ENVIRONMENTAL REPORTS** A copy of all environmental reports including those submitted to the Conservation Department shall be submitted by the applicant to the Planning and Zoning Office.
20. **ACCESS TO SITE** The Commission recommends that to assure safety that narrow adjacent roads not be used to transport heavy equipment to the work site.
21. **TREE REMOVAL** No tree removal as proposed in this application shall be done on site prior to completion of the tree inventory plan as required in condition 45 of the Conservation Commission's resolution of approval.
22. **ZONING PERMIT REQUIREMENTS** Prior to the issuance of a Zoning Permit please submit the following documents:
 - A. Revised plans in accordance with the Conditions herein.
 - B. A revised zoning data chart incorporating all of the changes resulting from the modifications and conditions of approval.
 - C. A construction phasing plan
 - D. Proof of completion of all Phase II & Phase III archaeology work as required by the consulting archeologist.
 - E. Submission of a separate maintenance plan, as described above in condition #18, to be reviewed and approved by the Department of Public Works.
 - F. Final approval by the Town Engineer.
 - G. Final approval by the Conservation Department and the Fire Department for the pervious paver materials for the emergency access driveway to Rice's Lane.
 - H. The final Sedimentation and Erosion Control Plan shall be approved by the Conservation Commission Director or her designee.
 - I. Final approval by the P&Z Commission of the lighting and landscaping plans at a work session.
 - J. All planting plans shall be reviewed and approved by the Conservation Department including the expanded riparian buffer area.
 - K. The inventory of trees required by the Conservation Commission in their resolution (Condition #45) shall be completed.
 - L. The non disturbance area as described by the applicant on the south western portion of the property shall be shown on the appropriate plans as described in condition 1.
 - M. Final approval of all setbacks on the plans by P&Z staff pursuant to finding, **SETBACKS** contained herein.
 - N. Proof of obtaining all necessary permits from the Department of Public Works.
 - O. Proof of obtaining all necessary permits from ConnDOT and the State Traffic Commission.
 - P. Proof of obtaining all necessary permits from CTDEP.

Q. Proof of filing a consolidation map on the land records that shows the area of Sunny Lane incorporated into the property.

R. Proof of filing this resolution with the Town Clerk.

S. Surety in the form of a bond satisfactory to the Town Attorney shall be prepared on the Planning and Zoning Bond Estimate Form, approved by the Town Engineer, and posted with the P&Z Office to guarantee completion of all site improvements, front landscape area plantings, buffer plantings, riparian buffer plantings and parking lot plantings.

23. **ENFORCEMENT** Failure to comply with any standard or condition contained in this Resolution, including the operation of the WWTS onsite sewage treatment system, shall be considered a zoning violation pursuant to Section 45-2 of the Westport Zoning Regulations. The failure of the WWFY to undertake corrective action within 10 days of being notified of such violation may result in the following remedies: 1) issuance of a notice of violation, 2) issuance of a cease and desist order, 3) issuance of a municipal citation with daily fines of up the maximum allowed by statute, and 4) enforcement action through a judicial proceeding.

STANDARD CONDITIONS

24. A certified "As-Built" shall be submitted prior to issuance of a Zoning Certificate of Compliance.
25. All new utilities shall be placed underground.
26. Trees shall not be removed from Town property.
27. A zoning permit shall be obtained within one year of this approval or said approval shall become null and void.
28. All plantings shown on an approved Site Plan shall be maintained in a healthy growing condition and all fences and walls shall be maintained in good physical condition throughout the duration of the use. Plants, fences or walls not so maintained shall be replaced with new materials no later than the beginning of the next immediately following growing season.
29. All work approved pursuant to this Site Plan and Special Permit shall be completed within 5 years of date of approval, by October 23, 2013.
30. This is a conditional approval. Each and every condition is an integral part of the Commission decision. Should any of the conditions, on appeal from this decision, be found to be void or of no legal effect, then this conditional approval is likewise void. The applicant may refile another application for review.

Reasons:

The proposed use has been found to be in conformance with the 2007 Town Plan of Conservation and Development; and it will

1. be in conformance with the applicable zoning regulations of the Town of Westport; and
2. not prevent or inhibit the orderly growth and development of the area; and
3. not have a significant adverse affect on adjacent areas located within the close proximity to the use; and
4. not interfere with pedestrian circulation; and

5. not have a significant adverse affect on safety in the streets nor unreasonably increase traffic congestion in the area, nor interfere with the pattern of highway circulation; and
6. not have a significant adverse affect on historical, archeological and/or paleontological sites; and
7. not obstruct significant views which are important elements in maintaining the character of the Town or neighborhood for the purpose of promoting the general welfare and conserving the value of buildings; and
8. not have a significant adverse effect on storm drainage, sewage disposal or other municipal facilities; and
9. be in scale with and compatible with surrounding uses, buildings, streets and open spaces.

VOTE:

AYES	-5-	Corwin, Lowenstein, Lathrop, Press, Kasanoff
NAYS	-2-	Martin Block, DeSanctis
ABSTENTIONS	-0-	

Very truly yours,



Ron Corwin
Chairman,
Planning & Zoning Commission

cc: First Selectman
Assessor's Office
Town Attorney's Office
Police Chief
Fire Marshal
Director, Public Works Department
Conservation Director
Chairman, Architectural Review Board
Sharat Kalluri, Wilbur Smith Associates
Gary Dufel, Stearns & Wheler
Pat Wellspeak, Wellspeak, Dugas & Kane
William Kupinse, Goldstein & Peck
Edward Lerner, Lerner & Gurarino